

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUBEN TONY CERVANTES,) Case No.: 1:20-cv-00188-NONE-JLT (HC)
Petitioner,)
) ORDER DENYING MOTION FOR STAY AND
) ABEYANCE
v.)
)
W.J. SULLIVAN, Warden,) (Doc. 24)
)
Respondent.)
)
)

On February 6, 2020, Petitioner filed the instant petition for writ of habeas corpus raising only one exhausted claim. (Doc. 1.) Petitioner filed a motion for a stay and abeyance of the proceedings, in which he included three claims to be exhausted. (Doc. 4.) Respondent did not oppose this request (Doc. 9), and on April 14, 2020, the Court granted a Kelly stay (Doc. 10). Petitioner had failed to comply with the Court’s orders and time allowances, therefore, the Court issued findings and recommendations to dismiss the petition. (Doc. 13.) However, on the same day, Petitioner filed a response to the Court’s order, stating that he had not been able to exhaust state remedies and requesting to withdraw the stay and abeyance and proceed with the one issue raised in his habeas petition. (Doc. 12 at 1.) The Court construed this as a motion to lift the stay and granted the motion and withdrew the findings and recommendations. (Doc. 14.) Pursuant to the Court’s order, Respondent filed an answer on September 4, 2020. (Doc. 18.) On November 10, 2020, the Court issued findings and recommendations to deny the petition (Doc. 20), and Petitioner filed objections to same on

1 December 21, 2020 (Doc. 23).

2 On February 12, 2021, Petitioner filed another motion for a stay and abeyance of the
3 proceedings. (Doc. 24.) Respondent filed an opposition to the motion on February 25, 2021. (Doc. 25.)
4 The Court previously stayed the action providing Petitioner the opportunity to return to state court to
5 exhaust his state remedies (Doc. 10), but the Petitioner indicated that he was not able to exhaust state
6 remedies and requested to withdraw the stay and abeyance and proceed with the one issue raised in his
7 habeas petition (Doc. 12 at 1). Petitioner again requests a stay of proceedings (Doc. 24), but as
8 Respondent contends, Petitioner not shown good cause nor has he shown that he has not been dilatory
9 (Doc. 25 at 1). Moreover, the Court has already considered the merits of this petition and issued
10 findings and recommendations to deny it. (Doc. 20.) Because Petitioner was already granted a stay and
11 given the opportunity exhaust and the Court has already considered the merits of the petition, the
12 Court denies Petitioner's second motion for a stay of the proceedings.

13 **ORDER**

14 Accordingly, the Court **ORDERS** Petitioner's motion for stay (Doc. 24) is **DENIED**.
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16 IT IS SO ORDERED.

17 Dated: February 26, 2021

18 /s/ Jennifer L. Thurston
19 UNITED STATES MAGISTRATE JUDGE
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